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10/523,438	09/14/2005	Harald Albrecht	P30826	7528
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GREENBLUM & BERNSTEIN, P.L.C.			EXAMINER	
1950 ROLAND CLARKE PLACE			DOUYON, LORNA M	
RESTON, VA 20191				
			ART UNIT	PAPER NUMBER
			1796	
			NOTIFICATION DATE	DELIVERY MODE
			03/18/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/523,438	ALBRECHT ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 January 2009.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 21-43 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 21-43 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

1. This action is responsive to the amendment filed on January 8, 2009.
2. Claims 21-43 are pending. Claims 1-20 are cancelled.
3. The objection to the abstract of the disclosure is withdrawn in view of Applicants' amendment.
4. The rejection of claims 1-2, 5-8, 11-13, 16 and 17 under 35 U.S.C. 102(b) as being anticipated by Kaneda et al. (US 2001/0046948) is withdrawn in view of Applicants' amendment.
5. The rejection of claims 1-2, 5, 7, 8, 11-16 under 35 U.S.C. 102(e) as being anticipated by Drucks et al. (US 2002/0102289) is withdrawn in view of Applicants' amendment.
6. The rejection of claims 3, 14 and 15 under 35 U.S.C. 103(a) as being unpatentable over Kaneda as applied to the above claims is withdrawn in view of Applicants' amendment.
7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 21-22, 24, 27, 29-30, 32-38 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wagner et al (US Patent No. 5,951,991), hereinafter “Wagner”.

Wagner teaches a substantially dry, disposable, personal cleansing product useful for both cleansing and conditioning the skin or hair (see abstract), wherein the product comprises (A) a water insoluble substrate, (B) a lathering surfactant, and (C) a conditioning emulsion, and wherein the lathering surfactant and conditioning emulsion are separately or simultaneously added onto or impregnated into said water insoluble substrate (see col. 3, lines 42-62). In Example 10, Wagner teaches a surfactant phase which comprises water (balance, i.e. 72.65 wt%), 0.25 wt% Polyquaternium-10 (reads on film former), 1.0 wt% sodium myristoyl sarcosinate, 1.0 wt% sodium lauroyl sarcosinate (wherein the sarcosinates are acylamino surfactants), 4.0 wt% decylpolyglucoside (a total of 6.0 wt% anionic and nonionic surfactants having a weight ratio of 2:4), 0.25 wt% methyl paraben (i.e., methyl p-hydroxybenzoate), 0.15 wt% propylparaben (i.e., propyl 4-hydroxybenzoate, both of which are preservatives and derivatives of benzoic acid, totaling 0.40 wt%) and 1.5 g of this solution is applied to a non-woven substrate and then dried (see col. 29, lines 4-50). Please note that when the solution was applied to the non-woven substrate, prior to drying, an intermediate product existed, which intermediate product anticipates the claims. Inasmuch as the same components and same proportions have been utilized, the viscosity of the composition should inherently be within those recited. Hence, Wagner anticipates the claims. Even if the teachings of Wagner are not sufficient to anticipate the claims, it would have been nonetheless

obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the solution of Example 10 of Wagner, when applied to the non-woven substrate, prior to drying, to form an intermediate product which read on the present claims.

9. Claims 23, 25-26, 28, 31, 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner as applied to the above claims.

Wagner teaches the features as described above. In addition, Wagner teaches that the product comprises from about 0.5% to about 40% lathering surfactant, based on the weight of the water insoluble substrate (see col. 8, lines 45-49). Useful lathering surfactants include anionic lathering surfactants, nonionic lather surfactants, amphoteric lathering surfactants and mixtures thereof (see col. 8, lines 57-60). Examples of anionic lathering surfactants include monoalkyl phosphates, sarcosinates, glutamates, for example, sodium cocoyl glutamate, and mixtures thereof (see col. 9, lines 10-14; 55-56; col. 10, lines 31-32). The composition can comprise a safe and effective amount of one or more active ingredients or pharmaceutically-acceptable salts thereof (see col. 21, lines 34-36), for example, anti-acne actives like salicylic acid and benzoyl peroxide (see col. 21, line 60 to col. 22, line 1). Wagner, however, fails to specifically disclose (1) the weight ratio of the anionic to nonionic surfactant as required in claims 23 and 39 and (2) a product comprising sodium cocoylglutamate.

With respect to difference (1), it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the anionic and nonionic surfactants through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

With respect to difference (2), it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a glutamate anionic surfactant such as sodium cocoylglutamate because this is one selection of suitable anionic surfactants which can be used in the composition.

10. Claims 21-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneda et al. (US 2001/0046948), hereinafter “Kaneda” in view of McAtee et al. (US 2002/0009484), hereinafter “McAtee”.

Kaneda teaches a cleansing material comprising a sheet material (which reads on wipe) impregnated with an emulsion having a viscosity of 200 to 4000 mPas at 25° C and a viscosity of 100 to 2000 mPas at 50° C (see abstract). The emulsion contains at least an oily component, water, and a surfactant (see paragraph 0015 on page 2). The content of water in the emulsion ranges from 10 to 80% by weight (see paragraph 0018

on page 2), and the content of the surfactant ranges from 0.5 to 10% by weight (see paragraph 0019 on page 2), and two or more surfactants may be used in combination, like nonionic and anionic surfactants (see paragraph 0020 on page 2). The sheet material preferably is impregnated with the emulsion at a ratio of from 1 to 80 g, and still more preferably from 2 to 5 g, per gram of the sheet material (see paragraph 0032 on page 3). The cleaning material can be produced by applying the emulsion to the sheet material by dropping the emulsion from a nozzle, or by spraying it, and then allowing the sheet to stand so as to allow the emulsion to sufficiently impregnate into the sheet material (see paragraph 0033 on page 3). In Example 1, Kaneda teaches a sheet material impregnated with 1.2 g of an emulsion (see paragraph 0038 on page 3) comprising 2.0 wt% polyoxyethylene sorbitan monostearate (20 EO) (a nonionic surfactant), 1.0 wt% aluminum dialkylphosphate (an anionic surfactant, whose ratio with the nonionic surfactant is 1:2 or 2:4), 0.1 wt% methyl paraben (i.e., methyl p-hydroxybenzoate), 0.1 wt% propyl paraben (i.e., propyl 4-hydroxybenzoate), (both of which are preservatives and derivatives of benzoic acid), and the balance purified water (37.8 wt%), see Table 1 on page 5. The viscosity of the emulsion of Example 1 is 1500 mPas at 25° C and 600 mPas at 50° C (see Table 2 on page 5). See also Examples 2-4 in Table 1 on page 5. In Example 3, the anionic surfactant is 1.5 wt% and the nonionic surfactant is 1.0 wt%, hence, the ratio of the anionic to nonionic surfactant. Kaneda teaches that the nonionic surfactants include polyoxyalkylene fatty acid esters, and the anionic surfactants include sulfosuccinic acid-type surfactants; α-olefinsulfonate-type surfactants, acylated amino acid-type surfactants and alkylphosphoric acid ester-type

(see paragraph 0020 on page 2). Kaneda, however, fails to specifically disclose an emulsion comprising acylamino acid surfactants like sodium cocoylglutamate, sulfosuccinates, or olefin sulfonates as the specific anionic surfactants, and alkyl polyglycosides as the specific nonionic surfactants, the presence of polyquaternium film former, and the proportions of water in amounts as those recited.

McAtee, an analogous art for cleansing the skin or hair (see abstract), teaches the equivalency of alkoxylated fatty acid esters with alkyl polyglucosides as nonionic surfactants (see paragraph 0126 on page 10), for example, decyl polyglucoside and lauryl polyglucoside (see paragraph 0127 on page 10). McAtee also teaches specific examples of acylamino surfactants or glutamates, for example, sodium lauroyl glutamate or sodium cocoyl glutamate (see paragraph 0121-0122 on page 10). McAtee also teaches the incorporation of Polyquaternium-10 in amounts like 1.0 wt% or 0.25 wt% (see paragraph 0235 on page 20; see also paragraph 0241 on page 20 and paragraph 0263 on page 21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the polyoxyalkylene fatty acid esters of Kaneda with alkyl polyglucosides, like decyl polyglucoside and lauryl polyglucoside, because the substitution of art recognized equivalents as shown by McAtee is within the level of ordinary skill in the art, and to have selected acylamino acid surfactants, like sodium cocoyl glutamate, as suggested by McAtee, sulfosuccinates, or olefin sulfonates as the specific anionic surfactants because these are some of the suitable selection of anionic surfactants taught by Kanedo in paragraph 0020 on page 2. In addition, it would have

been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Polyquaternium-10 in amounts like 1.0 wt% or 0.25 wt% to the composition of Kaneda because this would provide added skin benefits as taught by McAtee.

With respect to the amount of water, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range (i.e., 10 to 80 wt%; see paragraph 0018 on page 2) which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff*; 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

11. Claims 21-25, 27, 29-35, 38-39 and 42 are rejected under 35 U.S.C. 103(a) as being obvious over Drucks et al. (US 2002/0102289), hereinafter "Drucks".

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention “by another”; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Drucks teaches cosmetic and dermatological wipes which have been moistened with cosmetic and dermatological impregnation solutions which have a viscosity of less than 2000 mPas (see abstract). The impregnation solutions comprise one or more washing-active surfactants (see paragraph 0070 on page 3) in the range from 5 to 25% by weight (see paragraph 0071 on page 3); and preservatives which are usually between about 0.0005% and 1% active content (see paragraphs 0072-0073 on page 3). In Example 12, Drucks teaches a wipe wherein the impregnating solution comprises 6.5 wt% ceteareth-20 (a nonionic surfactant); 1 wt% paraben (a preservative); 1 wt%

C12-15 alkyl benzoates (which also reads on the preservative); and balance water (i.e., 64.5 wt%), see paragraph 0220 on page 15. Drucks also teaches that the weight ratio of the unimpregnated wipe to the impregnation solution is chosen from the range from 1:1 to 1:5 (see claim 2). Drucks also teaches that the wipes comprise one or more washing-active surfactants from the group of anionic, cationic, amphoteric and nonionic surfactants (see paragraphs 0032-0069 on pages 2-3) and the content of the one or more washing-active surfactants is chosen from the range from 5 to 25% by weight based on the total weight of the impregnation solution (see paragraph 0071 on page 3). Anionic surfactants to be used advantageously include acylamino acids and salts thereof (see paragraph 0034 on page 2), such as di-TEA-palmitoyl aspartate and sodium caprylic/capric glutamate (see paragraph 0035 on page 2); sarcosinates (see paragraph 0037 on page 2); phosphoric acid esters and salts (see paragraph 0043 on page 3); olefinsulphonates; or sulfosuccinates (see paragraphs 0047-0048 on page 3). Nonionic surfactants to be used advantageously include alkyl polyglycosides such as lauryl glycoside, decyl glycoside and cocoglycoside (see paragraph 0069 on page 3). Some examples of preservatives are benzoic acid, sodium benzoate, potassium benzoate or calcium benzoate (see paragraph 0079 on page 4). Antioxidants may also be added in an amount from 0.001 to 30% by weight, based on the total weight of the preparation (see paragraph 0085 on page 4), for example, acetylsalicylic acid (see paragraph 0089 on page 5). Drucks, however, fails to specifically disclose an impregnation solution comprising anionic surfactants like acylamino acid surfactants, sarcosinates or sulfosuccinates; or nonionic surfactants like alkyl polyglycoside; benzoic

acid as the preservative and the ratio of the anionic to nonionic surfactants as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate anionic surfactants like acylamino acid surfactants, sarcosinates or sulfosuccinates; nonionic surfactants like alkyl polyglycoside; and benzoic acid as the preservative because these components are the suitable selection of ingredients taught by Drucks and to optimize the proportions of the anionic and nonionic surfactants through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

12. Claims 26, 28, 36-37, 40, 41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drucks as applied to the above claims, and further in view of McAtee.

Drucks teaches the features as described above. Drucks, however, fails to specifically disclose sodium cocoylglutamate as the specific anionic surfactant, and the incorporation of polyquaternium film former.

McAtee, an analogous art, teaches the features as described above. In particular, McAtee teaches that specific glutamate anionic surfactant, and an example is sodium cocoyl glutamate (see paragraphs 0121-0122 on page 10). McAtee also teaches the incorporation of Polyquaternium-10 in amounts like 1.0 wt% or 0.25 wt% (see paragraph 0235 on page 20; see also paragraph 0241 on page 20 and paragraph 0263 on page 21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the acylglutamate of Drucks with sodium cocoylglutamate because the substitution of known equivalents is within the level of ordinary skill in the art, and to incorporate Polyquaternium-10 in amounts like 1.0 wt% or 0.25 wt% to the composition of Drucks because this would provide added skin benefits as taught by McAtee.

Response to Arguments

13. Applicants' arguments filed January 8, 2009 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Kaneda in view of McAtee, as they apply to the present claims, Applicants argue that one of ordinary skill in the art would understand that the equivalency of alkoxylated fatty acid esters with alkyl polyglucosides applies to compositions which are suitable for the purpose disclosed in McAtee, which purpose has nothing to do with intended application of the cleansing material taught by Kaneda.

The Examiner respectfully disagrees with the above arguments because as stated in paragraph 10, Kaneda and McAtee are analogous art, each teaching compositions for cleansing skin, and McAtee was relied upon in his teachings of equivalency of one nonionic surfactant, i.e. alkoxylated fatty acid esters, with another nonionic surfactant like alkyl polyglucosides. Hence, the substitution of one known nonionic surfactant for another known nonionic surfactant, is likely to be obvious when it does no more than yield predictable results.

With respect to the obviousness rejection based upon Drucks, as they apply to the present claims, Applicants argue that this document does not teach or suggest combining nonionic and anionic surfactants and none of the almost 20 exemplified compositions appear to contain different classes of surfactants recited in present independent claim 21.

The Examiner respectfully disagrees with the above argument because, as stated in paragraph 11, Drucks teaches that the wipes comprise one or more washing-active surfactants from the group of anionic, cationic, amphoteric and nonionic surfactants (see paragraphs 0032-0069 on pages 2-3) and the content of the one or more washing-active surfactants is chosen from the range from 5 to 25% by weight based on the total weight of the impregnation solution (see paragraph 0071 on page 3). Drucks, as mentioned in paragraph 11, teaches specific surfactants such as acylamino acids and salts thereof (see paragraph 0034 on page 2), di-TEA-palmitoyl aspartate and sodium caprylic/capric glutamate (see paragraph 0035 on page 2); sarcosinates (see paragraph 0037 on page 2); phosphoric acid esters and salts (see paragraph 0043 on

page 3); olefinsulphonates; or sulfosuccinates (see paragraphs 0047-0048 on page 3), and alkyl polyglycosides such as lauryl glycoside, decyl glycoside and cocoglycoside (see paragraph 0069 on page 3). With respect to the argument regarding the almost 20 examples, please note that a reference is not limited to the working examples, see *In re Fracalossi*, 215 USPQ 569 (CCPA 1982). Also, all disclosures of the prior art, including non-preferred embodiment, must be considered. See *In re Lamberti and Konort*, 192 USPQ 278 (CCPA 1967); *In re Snow* 176 USPQ, 328, 329 (CCPA 1973); *Merck & Co. v. Biocraft Laboratories Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1989).

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference is considered cumulative to or less material than those discussed above.

15. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796

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